IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7870 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANA KHERAJ

Versus

NIRANJAN J THAKER

Appearance:

MR KS JHAVERI for Petitioner

None present for Respondent No. 1, 2 & 3

MR MA BUKHARI for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/06/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. This writ petition was admitted on 16th November 1990 and interim relief in terms of para 15(B) of the special

civil application has been granted. Para 15(B) reads as under:

(B) Pending the final hearing and disposal of this petition, the Hounourable Court be pleased to restrain the respondent, its agents or servants from implementing the judgment and order of the Respondent No.4, dated 23rd May 1990, Annexure `C' to the petition.

So the order of respondent No.4, dated 23rd May 1990, annexure-C, challenged in this special civil application could not be given effect to.

#. One of the contention has been raised by learned counsel for the petitioner that the Additional Chief Secretary (Appeals), Revenue Department, Government of Gujarat, Ahmedabad, passed the order dated 23rd May 1990, annexure-C on the revision application of respondent No.1 without notice and opportunity of hearing to the petitioner. Carrying this contention further, the learned counsel for the petitioner submits that the petitioner came to know about the impugned order from the office of Dwarka Nagar Panchayat and on 1st November, 1990, he made application to the respondent No.4 for hearing him. He submits that on this application, no order has been passed by respondents.

#. The learned counsel for the respondents, referring to paragraph No.2 of the impugned order, submitted that the petitioner has been given notice and opportunity of hearing.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Though this writ petition has been admitted in the year and more than nine years have passed, the respondents have not cared to file reply to the special civil application. In the absence of reply to the special civil application, the averments made by petitioner in the special civil application stand uncontroverted. I do not find any merits in the contention of the learned counsel for the respondents. I fail to see wherefrom the respondents' counsel has read in paragraph-2 that notice of hearing has been given to the petitioner and the petitioner was heard in the matter by respondent No.4. From this paragraph, it comes out that the matter was fixed on 17th May 1990 on which date the applicant, meaning thereby, the revisionist and the Chairman of the Panchayat were present. Nowhere it is stated that the petitioner was having notice of hearing

and anybody was present on his behalf. The averment made in the special civil application that the order has been passed by respondent No.1 in violation of principles of natural justice has not been controverted. Moreover, from the application, annexure-D, filed by petitioner, which is also uncontroverted, it is clear that the petitioner was not given opportunity of hearing by the revisional authority before passing of the impugned order. Another ground is that this order impugned in the special civil application remained stayed for all these years and in case the opportunity of hearing is given to the petitioner, it will not adversely affect the right of any of the respondents. It is a matter where the land in dispute has been given to the petitioner by Dwarka Nagar Panchayat.

#. In the result, this special civil application succeeds and the same is allowed and the order of respondent No.4 dated 23rd May 1990, in Revision Application No.SRD/LMN/JNR/19/90 is quashed and set aside. Rule is made absolute. The respondent No.1State of Gujarat is directed to pay Rs.2,000/= as costs of this writ petition to the petitioner. However, the respondent No.4 is directed to restore the revision application to its original number and after giving notice of date of hearing and hearing the petitioner or his representative, if any remains present, decide the same on merits in accordance with law.

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(sunil)